

BOARD OF APPEALS CASE NO. 3267

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BEFORE THE

APPLICANT: Ronald D. Walker,
John F. Blevins and John M. Kendall

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ZONING HEARING EXAMINER

REQUEST: Modification of Case No.
1072 to construct twenty (20) additional
townhouse dwelling units;
1 Melrose Lane, Forest Hill

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 1/9/86 & 1/16/86

HEARING DATE: February 12, 1986
and May 14, 1986

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Record: 1/8/86 & 1/15/86

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ZONING HEARING EXAMINER'S DECISION

The Applicants are Ronald D. Walker, John F. Blevins, and John M. Kendall. The Applicants are requesting a modification of Board of Appeals Case No. 1072 to allow twenty (20) additional townhouses on a portion of a community development project site, approved as a conditional use for eighty (80) townhouses.

The subject property is located approximately 300 feet north of the terminus of Melrose Lane, off Bynum Road, south of MD Route 23. The property is more particularly identified as Lot No. 59 on Tax Map No. 40. The parcel contains approximately 2.7288 acres, more or less, all of which is zoned R3 (Urban Residential).

Mr. Thomas O'Laughlin appeared and qualified as an expert in the field of development planning. This witness testified that the increase of density occasioned by the additional 20 units meets the density requirements of Section 17.313 of the 1957 Zoning Ordinance, as provided for in Section 10.05. The witness further testified that the additional off-street parking shown on the Applicants' Exhibit No. 21 meets the requirements of the Ordinance. The witness said the project will be served by a private road known as Melrose Lane. Mr. O'Laughlin also testified that the project will be served by a private road known as Melrose Lane. The private road, Melrose Lane, becomes a public road of the same name upon leaving the Bynum Woods subdivision. The public road is a newly resurfaced road 20 feet in width. The present on-site private road is hard surface and is approximately 26 feet in width. The witness said the Applicants intend to increase its width as it abuts Bynum Woods townhouses only, by 12 feet with new construction abutting the existing roadway to the west. The increase in width will result in a hard surface road of 38 feet in width.

Case No. 3267 - Ronald D. Walker, John F. Blevins, John M. Kendall

Mr. O'Laughlin testified that the widening of the private road as it abuts the existing Bynum Woods townhouses will provide for diagonal parking on the east side of the entrance drive for Bynum Woods residents and still provide a 20 foot wide travel road for ingress and egress.

Regarding the length of any panhandle configuration of Melrose Lane on-site, Mr. O'Laughlin testified that the Subdivision Regulations do not apply because the subject property is not being subdivided and will remain in single ownership with rental units located on the parcel. Therefore, the 600 foot provision for the length of the panhandle set forth in the Subdivision Regulations of Harford County do not apply. He further stated that, even in the event that it did, the panhandle was less than 600 feet in length because the County policy is to measure the panhandle length from the closest intersection, i.e. Melrose Court and Melrose Lane.

Mr. O'Laughlin also said that a circular roadway system as proposed by the Department of Planning and Zoning would not improve traffic circulation and that it would create a further traffic burden on the roadways abutting the Bynum Woods townhouses and would disrupt the privacy presently enjoyed by the residents of the Columbine Court area. In addition, the Applicants do not own a portion of the property north of Columbine Road which would be necessary to create the loop or circular driveway system. The property is owned by Bynum Woods Homeowners Association, Inc.

Mr. O'Laughlin also testified that the project would be served by public water and sewer, and the Applicants intend to provide swingsets, a tot lot, picnic area, and to use the existing basketball court for active recreation.

Regarding compatibility with the neighborhood, Mr. O'Laughlin agreed with the Staff Report that the 20 townhouse units would be similar to and compatible with the current future uses in the neighborhood. He further stated that, in his opinion, the modification to the community development project to permit the additional 20 dwellings units would not adversely affect the public health, safety, and general welfare, nor would it result in dangerous conditions or jeopardize the lives of property of people living in the neighborhood.

Case No. 3267 - Ronald D. Walker, John F. Blevins, John M. Kendall

Ms. Aimee O'Neill appeared and qualified as an expert in the field of real estate and land appraisal. Ms. O'Neill testified that she was familiar with the Applicants' proposal for construction upon the subject property. She said the proposal would consist of townhouse units in blocks of six (6) or seven (7) units with two to three bedrooms, and one to one and one-half baths per unit. Quality of construction was found to be compatible with the neighborhood, and Ms. O'Neill testified that a reasonable sale price for the unit such as those to be constructed would be in the \$60,000-62,000 range. Ms. O'Neill noted that these units were not intended to be sold, but would be used as rental units once constructed.

Ms. O'Neill also discussed the improvements which were proposed by the Applicants, particularly highlighting the widening of the road. Ms. O'Neill testified that, in her opinion, the widening of the road was necessary adjunct to the development proposed by the Applicants. Assuming the road construction to be part of the development scheme, Ms. O'Neill testified, in her opinion, the construction of 20 townhouse rental units would have no adverse effect on the existing Bynum Woods townhouses. She, in fact, indicated that the effect of the construction would be salutary, noting that the constructed townhouses would replace a vacant area which had, from time to time, been significantly overgrown and utilized as a dumping area, that the quality of homes to be constructed would be of more than a comparable value to the existing Bynum Woods townhouses, and that the new construction would, in fact, appreciate values of the existing Bynum Woods townhouses, and that the existing Bynum Woods townhouses would benefit from the improved roadway to be constructed. Ms. O'Neill also testified that the loop road proposed by the Department of Planning and Zoning and the Staff Report would not be beneficial to the existing development in that it would result in increased traffic flow to the Columbine Court and Aster Lane areas.

In conclusion, Ms. O'Neill stated that the proposed project would create a residential environment of sustained desirability and stability, that it would be harmonious with the character of the surrounding neighborhood, and insure similar type occupancy as might be found in Bynum Woods townhouses, and would not adversely impact upon adjoining property owners, including but not limited to the Bynum Woods townhouses.

Case No. 3267 - Ronald D. Walker, John F. Blevins, John M. Kendall

Mr. John W. Guckert appeared as an expert in the field of traffic engineering. Mr. Guckert testified that after conducting a traffic count at the intersection of Bynum Road and Melrose Lane, he found the intersection to be currently operating at a level of service "A" during both the morning and evening peak hours. He stated that the additional traffic generated from the proposed 20 townhouses would not reduce the level of service and that traffic at the intersection would continue to operate in a satisfactory manner.

Mr. Guckert further stated that the additional 12 feet of paving along the east side of Melrose Lane adjacent to the Bynum Woods townhouses will provide adequate circulation within the community for existing townhouses and those proposed by the Applicants. Mr. Guckert support Mr. O'Laughlin's testimony that a circular traffic pattern within the community is unnecessary from a circulation standpoint and would create potential additional traffic on Columbine Court and Aster Lane. He further stated that he believed diagonal parking along the west side of Melrose Lane would not present a safety problem, but did recommend the parking pattern be changed from diagonal to ninety (90) degrees, if possible. In summary, Mr. Guckert stated that the development of the 20 townhouse units would not create an adverse effect on traffic conditions in the neighborhood and that satisfactory levels of service and circulation would be maintained in the future.

The Applicants also submitted an agreement between themselves, Warren D. Wolbert and Mary Lou Wolbert, owners of adjoining property, the Bynum Woods Homeowners Association, Inc., and all individual fee simple owners of the 50 townhouses in the Bynum Woods subdivision. The agreement was marked as Petitioners' Exhibit No. 23. The agreement was not fully executed on May 14, 1986 when it was introduced into evidence. The agreement was a result of negotiations between the Applicants, Bynum Woods Homeowners Association, Inc., and individual townhouse owners who had appeared at the February 12, 1986 hearing on this matter. Prior to the May 14, 1986 hearing, the Bynum Woods Homeowners Association, Inc. and the 50 individual homeowners negotiated the agreement, and as a result of the negotiations, the Association and the individual homeowners agreed not to oppose the Applicants' request. The agreement is presently being circulating among 50 individual homeowners for their approval. It is the understanding of all parties that if all individual homeowners do not execute the agreement, then it would become null and void and be of no force and effect. In

Case No. 3267 - Ronald D. Walker, John F. Blevins, John M. Kendall

the event the agreement does not become fully executed due to the inability of the Bynum Woods Homeowners Association, Inc. to acquire the 50 individual signatures, the Applicants are still willing to perform certain provisions set forth in that agreement. Those provisions are set forth in paragraph 4 - Bynum Playground Facility, in paragraph 5 - Restrictions on Use of Dumpsters, in paragraph 8 - the 12 foot additional macadam paving on Melrose Lane, in paragraph 12 - movement and erection of each of the gate posts, and in paragraph 13 - replanting of white pine trees.

The Staff Report of the Department of Planning and Zoning recommends disapproval of the application on the basis that it would adversely affect the safety, general welfare, and traffic conditions in the neighborhood.

CONCLUSION:

The zoning history of the subject parcel is noteworthy and began in 1965 when the Board of Appeals in Case No. 1072 rendered a decision granting Donald Dick a Community Development Project (CDP) for 80 units, subject to restrictions set forth in the opinion. Thereafter, Mr. Dick constructed 50 townhouses for use as rental apartments on a portion of the total 13.7 acre tract. On June 20, 1977, Mr. Dick recorded among the Land Records of Harford County a plat entitled, "Plat of Bynum Woods". This plat was recorded for the purpose of subdividing a 5.8 acre parcel of the property, and it set forth 50 townhouse lots, and the remainder parcel a common area.

Pursuant to a deed dated December 27, 1977, Mr. Dick conveyed to Advance Enterprises, Inc. the remainder of his property. That property was subject to conditions of Board of Appeals Case No. 1072, and the parcel contained approximately 6.4 acres.

Pursuant to a subdivision plat dated March 3, 1982, entitled "Final Plat, Section I, Bynum Woods", a portion of the remaining 6.4 acres was subdivided into 29 townhouse lots and a remainder parcel. The townhouse lots were to be sold in fee-simple, with remaining property designated as open space or common area. The total area of subdivision was 4.757 acres.

Case No. 3267 - Ronald D. Walker, John F. Blevins, John M. Kendall

Pursuant to a plat dated November 16, 1983, entitled "Revised Final Plat, Section II, Bynum Woods", Advanced Enterprises, Inc. revised its prior subdivision plat altering access to the property and reducing the area subdivided to approximately 3.7 acres. A condition of the approval of the revised plat required Advance Enterprises, Inc. to construct no more than 20 units on the parcel without further Board of Appeals approval in order to limit the total number of units on the property to 80. The reason that such an agreement was necessary was that the remaining property, now owned by the Applicants, contained the original Dick homeplace which, with outbuildings, had six (6) apartments located within its confines. The Applicants are the owners of the remaining 2.728 acres which is the subject of this hearing.

The Applicants are now requesting approval to allow 20 additional townhouses on a portion of the Community Development Project Site. Section 17.3 of the 1957 Zoning Ordinance relates to Community Development Projects and modifications thereof, and Section 25-3.3 of the 1982 Zoning Code and Section 25-3.1(i) of the 1982 Zoning Code are the sections applicable to this request.

The uncontradicted testimony of the witnesses who testified was that the modification to allow 20 additional townhouses would not adversely impact the community or its general welfare. The testimony further indicated that if the Applicants comply with conditions set forth in the agreement identified as Applicants' Exhibit No. 23, the additional units will not have an adverse impact. Therefore, the Applicants' request for 20 additional townhouses on the subject parcel is hereby recommended, subject to the following conditions:

1. The Applicants comply with the conditions set forth in Board of Appeals Case No. 1072, unless the conditions are modified by this decision.
2. That if the agreement identified as Applicants' Exhibit No. 23 is fully executed by all parties, the conditions set forth therein are hereby incorporated as conditions herein.

Case No. 3267 - Ronald D. Walker, John F. Blevins, John M. Kendall

In the event the agreement does not become executed by all parties, then the Applicants shall comply with Paragraph 4 - playground facilities, Paragraph 5 - Restrictions on Use of Dumpsters, Paragraph 8 - Additional Macadam Paving on Melrose Lane, Paragraph 12 - Movement and Erection of the Gate Posts, and Paragraph 13 - Replanting of White Pine Trees.

Date July 7, 1986



L. A. Hinderhofer
Zoning Hearing Examiner

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1 Melrose Lane, Forest Hill**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 1/9/86 & 1/16/86

HEARING DATE: February 12, 1986

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RULING ON MOTIONS

The Applicants, Ronald D. Walker, John F. Blevins, and John Kendall, filed an application to modify the conditions of Board of Appeals Case No. 1072 to allow twenty (20) additional townhouses on a portion of a community development site, approved as a conditional use, for eighty (80) townhouses, in a Case decided in 1965.

The subject parcel is located approximately 300 feet north of the terminus of Melrose Lane, off Bynum Road, on the south side of MD Route 23. The parcel is also identified as Parcel No. 59 on Zoning Map No. 40.

Counsel for the Applicants filed a number of exhibits as a preliminary matter, and after filing the exhibits, Counsel for the Protestants made the following motions:

1. Does the Board of Appeals have authority under Common Law or the Harford County Zoning Code to modify the decision of the Board of Appeals in Case No. 1072, and
2. Should the Applicants' request for modification be dismissed where it is impossible for the Applicant to comply with the CDP requirements existing under the conditional use approved in Case No. 1072, or the Planned Residential Development requirements (PRD) under the 1982 Zoning Code.

A review of the development of the property since 1965 reveals that, in 1965, Donald and Laura Dick, as owners of a 13.17 acre tract of R3 land on the north side of Melrose Lane, and pursuant to Sections 10.023 and 17.3 of the 1957 Zoning Ordinance, requested approval for an 80 townhouse Community Development Project (CDP), as a conditional use. In October 1965, the Board of Appeals approved the request for the CDP to construct 80 townhouses on the site.

Case No. 3267 - Ronald D. Walker, John F. Blevins, John M. Kendall

Shortly thereafter, the Dicks, pursuant to the CDP, constructed 50 townhouses on the site.

In June 1977, the Dicks subdivided the original 13.7 acre tract into two parcels; one containing 5.8 acres, which was improved by the 50 townhouses, and a second parcel containing 6.4 acres, improved by old farm buildings. Both of the parcels were then sold by the Dicks. The 5.8 acre parcel, improved by the 50 townhouses, was sold to Bynum Wood Homeowners Association, Inc., and the remaining 6.4 acres to Advance Enterprises, Inc.

In 1983, the 6.4 acre parcel conveyed to Advance Enterprises, Inc., was further subdivided into a 3.8 acre parcel, which was approved for 29 townhouses. The approval was apparently later reduced to 24 townhouses, and that parcel is still apparently owned by Advance Enterprises.

By deed dated December 21, 1983, the remaining 2.7 acre portion of the 6.4 acres was conveyed by Advance Enterprises, Inc. to Warren D. Wolbert, Ronald D. Walker, and John F. Blevins. Thereafter, Warren D. Wolbert conveyed his interest in the 2.7 acres to John M. Kendall. On September 20, 1985, Walker, Blevins, and Kendall filed the subject application to modify conditions of Board of Appeals Case No. 1072.

After argument of counsel on the motions by the Counsel for the Protestants, both counsels agreed that rather than proceed with testimony, that each counsel would research and brief their arguments on the motions and that the Hearing Examiner would rule on the motions, with the understanding that if the motions were sustained, the recommendation of the Hearing Examiner would be to dismiss the case and if the motions were overruled, the matter would be set in for a hearing.

The first motion concerns the Board of Appeals' authority to modify a CDP granted in October 1965.

Section 25-3.3(b) sets forth the powers and duties of the Board of Appeals. Included within these duties is the power "to perform any act, issue any order, or adopt any procedure consistent with law applicable to administrative agencies in general, and the provisions of this Code." The Board of Appeals has consistently permitted modification of previous decisions upon filing of an application, followed

Case No. 3267 - Ronald D. Walker, John F. Blevins, John M. Kendall

by a public hearing. This procedure has been utilized on many occasions. In the instant case, the conditional use was specifically exempt from the application of the 1982 Zoning Code under Section 25-9.3. Therefore, the Hearing Examiner must rule against the motion to dismiss by the protestants on the theory that the Board of Appeals does not have the power to modify a previously approved CDP.

The second motion by the protestants was that the application should be dismissed because the Applicants are the owners of 2.7 acres, which do not meet the minimum parcel requirements of either the 1957 Zoning Ordinance, or the 1982 Zoning Code.

The protestants argue that Sections 10.05 and 17.311 for the 1957 Zoning Ordinance, as amended, requires a three (3) acre parcel for a CDP, and Section 25-7.2(b)(1) of the 1982 Zoning Code requires a minimum ten (10) acre parcel to accommodate a PRD. Protestants further argue that by subdividing the original 13.7 acre tract and selling three (3) separate parcels to three (3) separate owners, the original CDP approval has been abandoned and terminated.

The Applicants argue that the Board of Appeals under the 1957 Zoning Ordinance, pursuant to Case No. 1072, determined that the subject parcel met the requirements for a CDP, as set forth in Section 17.3 of the Ordinance and, therefore, issued a zoning certificate for a Community Development Project, and thereafter it became binding for zoning purposes on the total 13.7 acre parcel owned at the time by the Dicks. The Department of Planning and Zoning, from 1965 to the present, has recognized the Community Development Project to be in force and effect as to the total Dick property. The subdivision of the 5.8 acre parcel in 1977 was pursuant to the Community Development Project approval. The two subdivision plats for an additional 29 townhouse units stated that the subdivision is subject to Board of Appeals Case No. 1072. There, likewise, is no evidence that the Community Development Project has been at any time revoked or vacated.

To find, as the protestants request, that the Applicant must have an individual tract of land comprised of three (3) acres or more would treat the application as a new application for a Community Development Project under the Code. Likewise, to find that in order to modify an existing Community Development Project the Applicants must satisfy provisions of Section 17.311 and have a tract of land comprising three (3) acres or more would leave the Applicants' property subject to the terms and conditions of the existing Community Development Project and

Case No. 3267 - Ronald D. Walker, John F. Blevins, John M. Kendall

thereby restrict the development of the project under the Code.

Therefore, the protestants' motion to dismiss because the Applicants cannot comply with the minimum area requirements is hereby denied.

This matter will be scheduled for the taking of testimony before the Hearing Examiner on May 14, 1986, at 7:00 p.m.

Date March 14, 1986

L. A. Hinderhofer
L. A. Hinderhofer
Zoning Hearing Examiner